

dence before him, to be found in Mr. Schley's applications to him for pecuniary aid, that his circumstances were, to say the least, in the most distressing condition of embarrassment.

But, it seems to me, that apart from considerations drawn from the conduct of Mr. Griffith in designedly withholding this deed from the public records, avowedly to gratify the wish of Mr. Schley, to keep from the community in which he lived the knowledge of its existence, there is quite enough to condemn it with respect to these complainants.

I cannot but think it falls within the express terms as well as spirit of the act of July session, 1729, ch. 8, "for the relief of creditors, and to prevent frauds and deceits occasioned by secret sales, mortgages, and gifts of goods and chattels." The 5th section of that act declares, that "no goods or chattels, whereof the vendor, &c., shall remain in possession, shall pass, alter, or change, or any property thereof be transferred to any purchaser, &c., unless the same be by writing, and acknowledged before one provincial justice, or one justice of the county where such seller, &c., shall reside, and be within twenty days recorded in the records of the same county." Here the goods did remain in possession of the mortgagor, and the mortgage was not recorded as required by the act, and, therefore, it would seem to follow, that the title did not pass.

It is said, however, that the mortgage of the 4th of June, 1846, was recorded in time, and that being so recorded before the complainants acquired any lien upon the property conveyed, the title must stand. But this is not my understanding of the effect of these instruments. We have seen that since the mortgage of the 4th of September, 1845, no new consideration of any description has passed between these parties, and I cannot but regard all the mortgages executed since then as mere renewals, or continuations of that which was executed on that day. Viewed in this light, the registration was not in time, and conceding, for the sake of the argument, that this mortgage though purposely and by design kept from the record, might now be recorded under the provisions of the 11th section of the act of 1785, ch. 72, it cannot, though now ordered to be re-